conducted a pork business at a nearby shop which he held on lease. This lease A surrendered in order that the defendant, his son, who bought the pork business with notice of this covenant, might get a new lease, and establish a business to rival the plaintiff's. The court enjoined the defendant on the ground that he had taken these premises with notice of the agreement which bound them. The court assumes almost without argument that this burden attached to the land, but it is difficult to see how a mere tenant for years could impose a restriction which would survive his lease. But furthermore it is submitted that this is not a true construction of what the parties intended, upon which, as a basis, this doctrine of equitable servitudes rests.[11] The purchaser of A's business had a much broader intent than merely to impose a servitude on this land. He intended to restrain A's rival business wherever A might attempt to establish it within three miles. A's business was, therefore, the *res* upon which this servitude was imposed. So the defendant, not as the occupant of these premises, but as the assignee of his father's business, is properly enjoined.[12]

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## RECENT CASES.

ADMIRALTY — TORTS — DAMAGES RECOVERABLE FROM ONE OF TWO VESSELS AT FAULT. — In a collision between vessels A and B in which both were at fault, the cargo on A was damaged. An action was brought, and both vessels were in court. The cargo-owner could probably recover nothing from A. *Held*, that he can recover from B only half of the amount of his damage. *The Drumlanrig*, [1911] A. C. 16.

This decision of the House of Lords affirms that of the Court of Appeal, discussed in 24 HARV. L. REV. 150.

ATTORNEYS — RELATION BETWEEN ATTORNEY AND CLIENT — CONSTRUCTION OF CONTRACT FOR COMPENSATION. — An attorney contracted to prosecute a suit for a contingent fee of one third of the recovery. He sued on a *quantum meruit* for extra services in defending against a counterclaim. *Held*, that these services are within the contract. *Payne* v. *Davis County*, 129 N. W. 823 (Ia.).

Two rules for construing contracts by attorneys for taking cases seem to reconcile all the authorities. First, where the consideration is a contingent fee, the contract is construed to include all legal services necessary to a final and effective recovery. Such a contract includes opposing a petition of *certiorari*, after final judgment. *Tuttle* v. *Claflin*, 88 Fed. 122. And so services in an appeal. *Niagara Fire Ins. Co.* v. *Hart*, 13 Wash. 651. But *cf. In re Bowles*, 12 N. Y. Supp. 468. But services in a separate suit are not held included, even though necessary to the successful completion of the suit which the contract concerns. *Haines and Bishop* v. *Wilson*, 85 S. C. 338. See *Gorrell* v. *Payson*, 170 Ill. 213. Secondly, when the contract is for a fixed fee, it is held not to include unusual, though necessary, services. Such a contract does not include getting a *mandamus* to compel a rehearing. *Isham* v. *Parker*, 3 Wash. 755. Nor does

[11] See the quotation from Bigelow, C. J., in Whitney *v.* Union Ry. Co., *supra*.

[12] The whole subject of the theoretical basis of the enforcement of these restrictions is very carefully dealt with in 5 HARV. L. REV. 274, and 6 *id.* 280.

it include resisting a motion to vacate a judgment, *Cranmer* v. *Brothers*, 15 S. D. 234. Nor services in an appeal. *Bartholomew* v. *Langsdale*, 35 Ind. 278. Nor even meeting unexpected opposition in a supposedly friendly suit. *Tong* v. *Orr*, 44 Ind. App. 681. But putting in a counterclaim is so usual a proceeding that the principal case would probably have been decided the same way even if the fee had been a fixed amount. *Lindsay* v. *Carpenter*, 90 Ia. 529.

BANKRUPTCY — EXEMPTIONS — RIGHT OF CREDITOR WITH WAIVER OF EXEMPTION. — A bankrupt had given a creditor a waiver of exemption. By amendment of his schedules, the bankrupt withdrew an insufficient claim for exemption. *Held*, that the exempt property is assets of the bankrupt estate. *In re Baughman*, 183 Fed. 668 (Dist. Ct., M. D. Pa.).

A bankrupt has a right to the exemption allowed him by state law, provided he claims it in his schedules or an amendment thereto. BANKRUPTCY ACT OF 1898, §§ 6, 7 a (8); GEN. ORDER XI, 89 Fed. vii; *In re Berman*, 140 Fed. 761. Courts differ as to whether amendment should be allowed when its only effect is to benefit creditors with waivers of exemption. *Moran* v. *King*, 111 Fed. 730; *Goodman* v. *Curtis*, 174 Fed. 644. The question in the present case is whether such a creditor may claim the exemption if the bankrupt does not. The right of a waiver creditor is not a lien on the exempt property. *In re Moore*, 112 Fed. 289. *Cf. In re Meredith*, 144 Fed. 230. The Supreme Court has called it an "equity" which enables the creditor to obtain a stay of the bankrupt's discharge in order that he may proceed in a state court against the property which the bankrupt has claimed as exempt. *Lockwood* v. *Exchange Bank*, 190 U. S. 294. It would seem not an illogical extension of this doctrine to allow the waiver creditor to claim the exemption when the bankrupt fails to do so. But the courts have not done so, even under state laws which, unlike the law of Pennsylvania, allow a waiver as to a particular creditor. *Moran* v. *King*, *supra*. See VA. CODE, 1904, § 3647; *Bowyer's Appeal*, 21 Pa. St. 210.

CONFLICT OF LAWS — REMEDIES: RIGHT OF ACTION — VENUE OF ACTION FOR USE OF LANDS. — The defendant had been adjudged by an Idaho court to be a trespasser on the plaintiff's land there situated, to which he had claimed title. The plaintiff brought an action in Washington to recover the reasonable rental value while the defendant was in possession. A statute permitted a recovery of reasonable rent if the defendant was in possession without the consent of the true owner. *Held*, that this action being transitory may be maintained in Washington. *Sheppard* v. *Coeur d'Alene Lumber Co.*, 112 Pac. 932 (Wash.).

By the overwhelming weight of authority, actions dealing with wrongs to realty, such as trespass, are local. *British South African Co.* v. *Companhia de Moçambique*, [1893] A. C. 602. *Contra, Little* v. *Chicago, etc. Ry. Co.*, 65 Minn. 48. But if the action is based on contract it is transitory. *Wey* v. *Yally*, 6 Mod. 194. On this theory, the common-law action of use and occupation may be brought where the defendant is found, for it is based on the implied agreement to pay a reasonable rent for this use which the owner has permitted. *Henwood* v. *Cheeseman*, 3 Serg. & R. (Pa.) 500; *Egler* v. *Marsden*, 5 Taunt. 25. The statute in the principal case permits a recovery if the defendant was in fact in possession even though he claimed title and was defeated in an action of trespass. There is thus no consensual relation from which to create a contract, and it is the plainest fiction to imply an agreement to pay rent when the trespasser denies the other's title. *Jackson & Brothers* v. *Mowry*, 30 Ga. 143. It is essentially a cause of action based on a wrong done to the land, and in the absense of an express declaration by the statute that it is transitory, this departure from the ordinary rule is unjustifiable.